STATE OF MAINE
SUPREME JUDICIAL COURT

DOCKET NO. OJ-17-1

IN THE MATTER OF
REQUEST FOR OPINION OF THE JUSTICES

Before the Justices of the Supreme Judicial Court
On Referral from the Maine State Senate

RESPONSIVE BRIEF OF MAINE HOUSE REPUBLICAN CAUCUS AND MAINE HERITAGE POLICY CENTER

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I. A Solemn Occasion Exists.

While the Republican Caucus and MHPC have not addressed the "solemn occasion" issue at length, a student of history cannot ignore the potential parallels with prior events that could arise should the Court decline to reach the questions. While uncertainty over the outcome of the next election is unlikely to generate the same level of chaos as 1880, more recent turmoil such as the saga of *Bush v. Gore* highlights the need for clarity as to governing rules **before** elections take place.

II. The Act Is Unconstitutional.

Proponents' argument that the Act is a mere technical statute that complies with the Constitution's plurality requirement is belied by the plain language of the Constitution, the structure of the Act, voters' intent, and even proponents' own pre-election advocacy. Their arguments are also inconsistent with the history behind the plurality requirements, which mandates a "first past the post" election system.

A. The Act Is Inconsistent With The Constitution's Plain Language.

Proponents argue that the Act effects a mere procedural change in the method of tabulating a plurality. That is, proponents would have the Court construe the Act as though it were no more than a law requiring use of a blue marker rather than a black marker in filling out a ballot. This interpretation strains credulity. **The Act changes who wins elections, in a manner contrary to the Constitution.** Because the Act's new majority rule is "not ambiguous," the Court has "no occasion to apply the rule of

construction that prefers interpretations of statutes that do not raise constitutional problems." *McGee v. Sec'y of State*, 2006 ME 50, ¶18, 896 A.2d 933, at 939-40.

1. The Constitution Mandates A "First Past The Post" System.

Constitutional interpretation begins with its plain text. *State v. Gilman*, 2010 ME 35, ¶ 16, 993 A.2d 14, 20. The Constitution states that Representatives, Senators, and the Governor must be elected by a "plurality." Me. Const. art. 4, pt. 1, § 5; *id.* art. 4, pt. 2, §§ 4, 5; *id.* art. 5, pt. 1, § 3. The term "plurality" in these provisions can only mean that the candidate securing the most votes from one round of balloting shall be declared the winner. Maine once required a majority vote for these offices, as well as a runoff-style method of selecting a winner in the event no candidate secured a majority. (*See* House Republicans Br., at 11-13). By replacing the majority / runoff system, Maine citizens instituted and meant to institute a "first past the post" system. History could not be more clear: Maine voters had experienced a multi-round, runoff-style election system and consciously rejected it. (*See id.*, at 7-8, 13-15.) They enshrined that change in the Constitution – and only another amendment can change it.[1]

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[1] The existence of the Constitutional provisions establishing the threshold for election distinguishes this case from the term limits cases cited by the Committee for Ranked Choice Voting. (*See* Committee Br., at 15-16). In those cases, term limits were found constitutional – but only because the Constitution did not set forth any qualifications for certain offices and only provided minimum qualifications for other offices. *See Opinion of the Justices*, 623 A.2d 1258, 1262-63 (Me. 1993). Indeed, the actions of the first Legislature to convene after the ratification of the Maine Constitution demonstrated the Legislature's authority to introduce new qualifications. *See League of Women Voters v. Sec'y of State*, 683 A.2d 769, 772 (Me. 1996). By contrast, there are directly applicable Constitutional provisions in this case that establish a "ceiling," rather than a "floor," for election. (*See* House Republicans Br., at 6-9).

2. The Act Creates A New System Designed And Intended To Change The Outcomes Of State Elections.

The only reason the Act exists is to change the Constitution's "first past the post" system to a "possibly the second or third past the post, if the first past the post does not have a sufficient margin" system. To construe the Act as a mere procedural law rather than as a law that changes the minimum threshold for election in an attempt to save it from constitutional infirmity would be inconsistent with its own structure and purpose.[2] *See Beaudry v. Harding*, 2014 ME 126, ¶ 6, 104 A.3d 134, 136 (court construes statutes whole, and giving effect to legislative intent); *League of Women Voters*, 683 A.2d at 771 ("[T]he constitutional validity of a citizen initiative is evaluated under the ordinary rules of statutory construction.").

a. The Act Is Designed To Change Election Outcomes.

The structure of the Act demonstrates that it imposes a majority requirement. *Tenants Harbor Gen. Store, LLC v. Dep't of Envtl. Prot.*, 2011 ME 6, ¶ 9, 10 A.3d 722, 726 (court construes a statute in light of its structure). The Act, by its very design, alters the outcome of elections in the State of Maine. It does so by allowing voters to express more than one "preference," and mandating that more than one round of ballot counting occur (unless, notably, a candidate receives an initial majority). In

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[2] The League of Women Voters goes so far as to liken the Act to authorizing the use of "certified copies" of official election returns rather than the original official returns when such returns are lost. (*See* League Br., at 9. *See also, e.g.*, League Br., at 3 (arguing that the Act simply "sets forth a new format for ballots and a new method of tabulation")). Such procedural measures, however, actually "advance ... the main object" of the Constitution, whereas, in contrast, the Act would "thwart" that object. *Opinion of Justices*, 70 Me. 570, 598 (1880) (rejecting Governor Garcelon's election canvass).

subsequent rounds of counting, certain "preferences" are disregarded based on which candidates have been eliminated and a new "preference" recognized (to the extent indicated). 21-A M.R.S. §§ 1(35-A), 723-A. By this means, the person that received an initial plurality may be deprived of election.

Accordingly, the Act qualitatively changes the system established by the Constitution by reinstating the majority requirement and the runoff system. The Maine voters who adopted the Constitutional amendments in the 1800s rejected the lack of transparency and opportunity for electoral shenanigans that came with the majority requirement, and chose instead a simple rule that the person who attracted the most votes wins. The Act conflicts with that precept, reintroducing those complications and potentialities – though in a modern form – and rejects the notion that someone who garners only a small percentage of the vote should win. Instead of putting elections at the mercy of backroom horse-trading (as in the 1800s), the Act puts the outcome of elections into a "black box" of computer algorithms (and a computer system that is subject to the potential for hacking, as modern headlines readily suggest). In so doing, the Act conflicts with the Constitution's text and intent.

b. Voters Intended To Impose A New Majority System.

Critically, the intent of the voters approving the Act also demonstrates that it is unconstitutional. The Court must "assume that the voters intended to adopt the [statute] on the terms in which it was presented to them." *League of Women Voters*, 683 A.2d at 774. Here, the Act was adopted for the express purpose of establishing a

majority voting requirement. The ballot question itself read: "Do you want to allow voters to rank their choices of candidates … and to have ballots counted at the state level in multiple rounds … **until a candidate wins by majority**?" The fact that voters approved the Act based on this language shows a clear intent on the part of the voters to impose a majority rule. Indeed, in its brief, the Committee lets slip that "the impetus for the Act came from deep frustration with an electoral system that had elected a governor with less than 40% of the vote" and that only two of the last eleven elections resulted in "a candidate [who] received a majority." (Committee Br., at 1-2.) The statute should not be construed contrary to voters' intent. *League of Women Voters*, 683 A.2d at 773 ("[W]e avoid a construction that leads to a result clearly not within the contemplation of the lawmaking body."); *Camp Walden v. Johnson*, 156 Me. 160, 164, 163 A.2d 356, 358 (court construes legislation to give effect to its intent).

B. The Act Does Not Simply Change How A Plurality Is Calculated.

1. Proponents Now Urge A New Construction Of The Act.

Proponents' own words belie their argument that the Act is consistent with the plurality requirement. The Committee and the League now contend that the Act "does not mandate that the winning candidate receive a majority of the votes cast," but instead is simply a new method of tabulating a plurality. (League Br., at 11; *see* Committee Br., at 19-21). Not so long ago, the Committee declared that the Act "Restores Majority Rule" by creating a process that ensures "one candidate reaches a

majority."[3] Likewise, the League formerly testified that the Legislature should enact ranked choice voting because it "ensures a majority winner," and even opposed one proposed variant of ranked choice voting that would have capped the rounds of ballot-counting at three because the winner "could be a plurality winner."[4] Proponents' change in position, made in an effort to defend the Act, is creative lawyering. The problem with such *post hoc* re-positioning, however, is that the prior electioneering reflects the intent not only of the proponents, but the voters. That intent was to change the constitutional plurality standard to a new, majority standard.

2. The Act Does Not Maintain A Plurality Election System.

Proponents argue that the Act is consistent with the plurality requirement because determining the winner after one round of ballot-counting is artificial – instead of determining who wins a plurality after one round of counting, the plurality winner should be determined after the "final" count under the new process. (Committee Br., at 2, 20; League Br., at 11-12). One basic problem with this argument is that the first round of ballot counting can be the final count under the new election system – but, unlike the prior election system, only if one candidate obtains a majority. The Act provides for "batch elimination" of multiple candidates if it is "mathematically impossible" for those candidates to be elected –which, by definition,

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[3] Yes On 5, http://www.rcvmaine.com/faq (last visited March 16, 2017). A printed copy of the Committee's FAQ page is attached hereto as Addendum 1.

[4] Testimony of League of Women Voters, *Hearings on LD 518 Before the Joint Standing Committee on Legal and Veterans' Affairs* (Apr. 22, 2013). A printed copy of the League's testimony is attached hereto as Addendum 2.

occurs when one candidate obtains a majority in the first round. *See* 21-A M.R.S. § 723-A. Accordingly, the Act itself provides that the first round can be dispositive of the election, providing that round with inherent importance. The significance of obtaining a plurality or majority in the first round of ballot-counting under the Act is therefore demonstrably different than the analogy offered by proponents, namely, declaring a winner before counting all ballots. (*See* League Br., at 11). The Act requires a majority where the Constitution requires only a plurality.[5]

The cases cited by proponents are inapposite. *See Dudum v. Arntz*, 640 F.3d 1098 (9th Cir. 2011); *McSweeney v. City of Cambridge*, 665 N.E.2d 11 (Mass. 1996). In *Dudum*, the court simply held that ranked choice voting does not impose a burden on the right to vote akin to limiting individuals' right to vote in successive elections. *Dudum*, 640 F.3d at 1107. For that purpose (and that purpose alone), the court in *Dudum* found ranked choice voting to be "steps of a single tabulation" and a single "round of inputs, *i.e.*, votes," and concluded that voters need be afforded only one chance to rank their preferences. *Id.* Similarly, in *McSweeney*, the court only observed that ranked choice voting (1) does not impose a burden on the right to vote by not counting the votes cast in "exhausted" ballots, because these votes are also counted; and (2) does not impose a burden on the right to vote by counting certain votes twice, because no ballot helps elect more than one candidate. *McSweeney*, 665 N.E.2d at 14.

[5] Accordingly, proponents' argument that the Act should survive scrutiny because it merely creates a new "voting system" and does not affect "the percentage of votes needed to win an election" – which, proponents admit, the Constitution does address – rings hollow. (Tinkle Br., at 22.)

Neither court considered whether multiple rounds of ballot-counting under ranked choice voting is consistent with a constitutional plurality requirement.[6] By contrast, this issue was addressed in *Rockefeller v. Matthews*, in which the court found a comparable system to be unconstitutional. 459 S.W.2d 110, 111 (Ark. 1970).[7]

Proponents of the Act also cannot save it by pointing to Article 9, Section 12. That provision – added in 1870 as Amendment XII, *see* Res. 1869, c. 91 – is very narrow. It only provides the Legislature authority to establish voting districts and "prescribe the manner in which votes shall be received, counted, and the result of the election declared." Me. Const. art. IX, § 12. By contrast, the Legislature was once authorized to alter the "mode of returning, examining, and **ascertaining** the election of" Representatives. Me. Const. art. 4, pt. 1, § 5 (1820). The "ascertaining" language was dropped, consciously limiting the Legislature's authority in this area and leaving fundamental election methodology to the less mutable Constitution. (*See* House Republicans Br., at 8, 12, 14). Accordingly, far from authorizing the Legislature to change which candidate is elected, the language of Article 9, Section 12 permits only

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[6] To the extent proponents rely on *Moore v. Election Comm'rs of Cambridge*, 309 Mass. 303, 329 (1941), the discussion regarding plurality voting was pure dicta – the plurality requirement of the Massachusetts Constitution did not apply to the election laws at issue, which pertained to municipal elections. *Id.* Moreover, *Moore* has been abrogated. *See McSweeney*, 665 N.E.2d at 14-15.

[7] The Act's proponents may argue that *Rockefeller* is distinguishable because it involved a separate runoff election rather than ranked choice voting. Proponents may argue that a two-person runoff requires a true majority, whereas the winner under a ranked choice voting system might be portrayed as a "plurality" winner if one were to consider all exhausted ballots. (*See* League Br., at 11 & n.5). That distinction does not hold, given the express purpose of the Act and the functional structure of the Act (as described above). The Act provides only two ways for candidates to win: obtain a majority on the first round of ballot-counting, or obtain a majority on a later round of ballot-counting, after the votes for other, eliminated candidates have been redistributed. The Act, no less than the statute in *Rockefeller*, requires a candidate to secure a majority.

technical changes. As discussed above, however, the Act does not simply change who maintains custody over ballots, *see, e.g.*, 21-A M.R.S. § 628, define who can count ballots, *see, e.g.*, *id.* §§ 503-504, or alter publication of results, *see, e.g.*, *id.* § 621-A. Instead, it changes the result itself – who will be declared the winner of an election. This change cannot be effected by mere statute.

C. Constitutional History Demonstrates That The Plurality Provisions Were Meant To Prevent More Than Legislative Meddling In Elections.

Proponents of the Act acknowledge that the Maine Constitution should be "accorded a liberal interpretation in order to carry out their broad purpose," and "should receive such a liberal and practical construction as will permit the purpose of the people expressed therein to be carried out." *Allen v. Quinn*, 459 A.2d 1098, 1102, 1104 (Me. 1983). (*See* Committee Br., at 13; League Br., at 7). They then proceed, however, to construe the plurality provisions of the Constitution narrowly, suggesting that they were only meant to preclude the Legislature from ignoring the expressed will of voters or promote efficiency. (*See* Committee Br., at 21-24; League Br., at 13-15). This narrow construction of the Constitution does not withstand scrutiny.

On its face, the change from a majority to a plurality requirement indicates that the voters who approved the amendments affecting the election of Representatives, Senators, and Governor wanted to adopt a "first past the post" system whereby the person garnering the most votes – majority or not – should be declared the winner.

As the most liberal practical construction available, it is the construction that should be given to the Constitution. *Opinion of the Justices*, 673 A.2d 1291, 1297 (Me. 1996).

Moreover, the narrow reading suggested by proponents is not sustainable. They argue that the plurality provisions were simply meant "to avoid the evil of legislative frustration of the people's will." (Committee Br., at 21). But the Constitution originally required voters themselves to hold a subsequent election for Representative in the event no candidate obtained a majority. (*See* House Republicans Br., at 14). Proponents respond that this particular provision was simply changed for reasons of "efficiency and economy." (League Br., at 13-14). There is no legislative history that supports this interpretation.[8] Given the lack of support for proponents' narrow and counterintuitive reading, the Constitution should be interpreted more liberally to protect the will of the voters who approved that language.

CONCLUSION

The question presented is not whether ranked choice voting is good policy. It may or may not be. But our current policy – a simple plurality standard, with no runoffs, instant or otherwise – is firmly established in the Constitution, and so can only be changed by amending the Constitution itself. Put simply, plurality means plurality. The only reason proponents advanced the Act was to change this standard. They can do so, but must follow the Constitution.

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[8] While proponents cite Tinkle's work, the language they quote is supported by no citations to legislative history or other sources. *See* Marshall J. Tinkle, *Maine State Constitution*, at 11 (2d ed. 2013).

Dated: March 17, 2017

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ADDENDUM 1

THE COMMITTEE FOR RANKED CHOICE VOTING

FAQ

YES ON 5
MORE VOICE

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- What's the problem with our current voting system?
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What's the problem with our current voting system?

A: Majority rule is a fundamental principle of American representative democracy. Our leaders should be elected by more than half of us.

Races with more than two candidates are common in Maine and often result in winners elected by fewer than half of voters. In 9 of the last 11 races for governor, candidates were elected by fewer than half of voters. In 5 of those races, candidates were elected by fewer than 40% of voters. None of Maine's governors have been elected to their first term by a majority of voters in the last 40 years.

The nonpartisan League of Women Voters of Maine has endorsed ranked choice voting as the most cost-effective solution to restore majority rule and to give voters more power.

What are the benefits of voting with a ranked choice ballot?

A: There are a lot of problems with our politics today. Ranked choice voting is not a silver bullet, but it is something that we can do now to improve Maine politics.

1. **Restores Majority Rule**. Ranked choice voting ensures that candidates with the most votes and broadest support win, so voters get what they want. Candidates who are opposed by a majority of voters can never win ranked choice voting elections.

2. **Eliminates Vote Splitting.** Ranked choice voting gives you the freedom to vote for the candidate you like the best without worrying that you will help to elect the candidate you like the least. You never have to vote for the "lesser of two evils" when there is another candidate you really like.

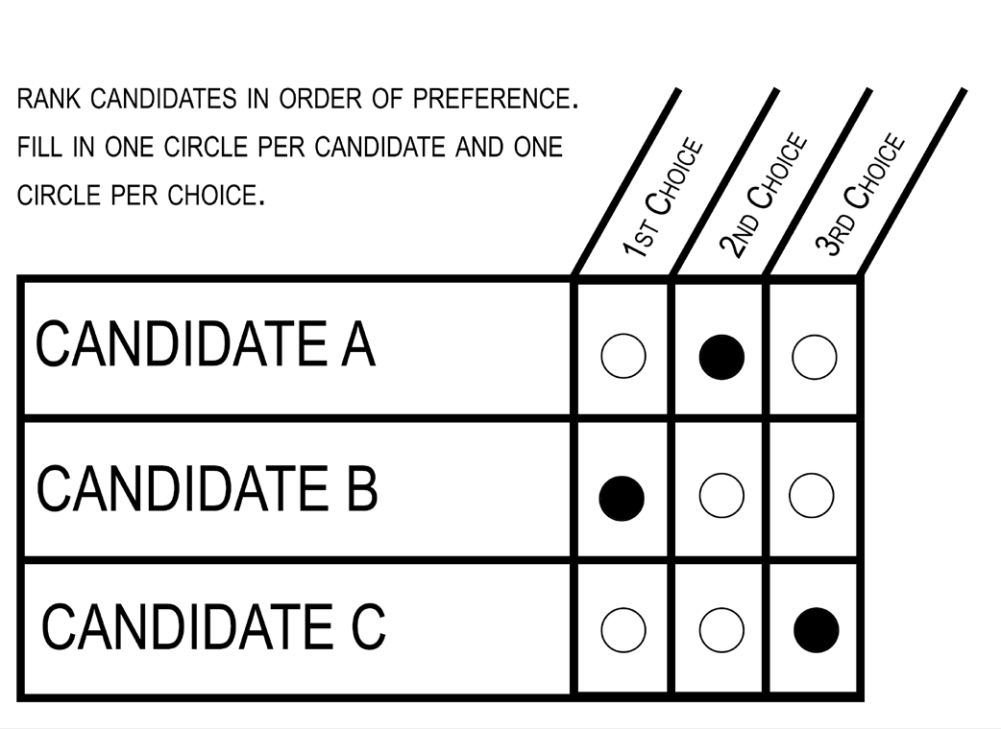
3. **More Voice for Voters.** Your voice matters more with a ranked ballot. You never feel like your vote is "wasted." If your favorite candidate can't win, your vote counts for the candidate you ranked second.

4. **More Choice for Voters.** Ranked choice voting levels the playing field for all candidates and encourages candidates to take their case directly to you with a focus on the issues.

5. **Reduces Incentives for Negative Campaigning.** Candidates are encouraged to seek second choice rankings from voters whose favorite candidate is somebody else. You are less likely to rank as your second choice a candidate who has issued personal attacks against your favorite candidate.

What does a ranked choice ballot look like?

A:



How does ranked choice voting work?

A: **Ranked choice voting gives you the power to rank candidates from your favorite to your least favorite.** On Election Night, all the ballots are counted for voters' first choices. If one candidate receives an outright majority, he or she wins. If no candidate receives a majority, the candidate with the fewest first choices is eliminated and voters who liked that candidate the best have their ballots instantly counted for their second choice. This process repeats and last-place candidates lose until one candidate reaches a majority and wins. Your vote counts for your second choice only if your first choice has been eliminated.

What would our citizen initiative do?

A: If enacted by Maine voters in November 2016, our citizen initiative would give voters the power to rank candidates running for U.S. Senate, U.S. House, Governor, Maine Senate and Maine House beginning in 2018. Ranked choice voting would be used to give voters more power in primary and general elections. Voters could rank as many or as few candidates as they like. Our citizen initiative would create a more representative democracy that restores majority rule and empowers voters.

Is ranked choice voting a new idea?

A: Ranked choice voting has been used for over 120 years by hundreds of governments and private associations. Ranked choice voting was invented in New England in 1871. It was first used in an 1893 election. Ranked ballots are recommended by Roberts' Rules of Order. Ranked choice voting has been used to elect the mayor of Portland since 2011. Ranked choice voting legislation has been introduced in the Maine Legislature since 2001 with growing support among Republican, Democratic and Independent lawmakers. In 2016, we're bringing ranked choice voting back home to New England to make our elections and our government work better for the people of Maine.

How did this initiative come about?

A: Ranked choice voting legislation was introduced in the Maine Legislature when Independent Angus King was governor and when Democrat John Baldacci was governor. It has been introduced since Paul LePage took office with growing support Republican, Democratic and Independent lawmakers.

In 2008, members of the League of Women Voters of Maine began studying possible solutions to restore majority rule, eliminate vote splitting and give voters more power. In 2011, the League endorsed ranked choice voting through a consensus process that involved their membership statewide. In 2013, the League convened a working group of civic leaders and legal scholars that developed language for this citizen initiative.

The Committee for Ranked Choice Voting was formed in October 2014 to collect signatures for the citizen initiative.

Who supports ranked choice voting?

A: The nonpartisan League of Women Voters of Maine has led the effort to enact ranked choice voting in Maine. The *Portland Press Herald*, the Brunswick *Times Record*, the Belfast *Republican Journal* and other Maine newspapers have editorialized in support of ranked choice voting. Hundreds of business, labor, civic, and faith leaders including Democrats, Republicans, Independents, Greens, and Libertarians from across Maine have endorsed ranked choice voting. Citizen empowerment groups like Common Cause and FairVote also support ranked choice

voting. Prominent backers of ranked choice voting include 2008 presidential rivals Democrat Barack Obama and Republican John McCain, who said that ranked choice voting "will lead to good government because voters will elect leaders who have the support of a majority. Elected leaders will be more likely to listen to all."

Where is ranked choice voting used?

A: In 2011, voters in Portland, Maine elected their mayor with ranked choice voting. Turnout was 40% higher than election officials projected and the winner was elected with 56% of the vote in the final round. 41% of voters thought there was less negative campaigning, 45% felt more inclined to vote for their favorite candidate and 39% did more homework on the candidates. Cities and counties across the United States use ranked choice voting. Governments around the world use ranked choice voting in national elections, including Australia and Ireland. Ranked ballots are recommended by Roberts' Rules of Order and are used by hundreds of private associations across the United States and around the world.

Does ranked choice voting favor one party over another?

A: No. Ranked choice voting does not advantage one political party or faction over another. It's why cities and towns with Republican, Democratic and Independent majorities have adopted it. It's why Republicans parties, as well as Democratic parties across the country use it.

Ranked choice voting can influence who decides to run for public office. It can influence how candidates interact with (more) voters and govern as elected leaders (coming to the middle to find common ground). It does not help or hurt the electoral chances of any party.

Does ranked choice voting uphold one person, one vote?

A: Yes. Courts have already ruled that ranked choice voting upholds the principle of one person, one vote, and it restores the principle of majority rule.

Are ranked choice ballots confusing for the average voter?

A: No. Whether it's deciding what car to buy or what menu item to order, we make ranked choices every day of our lives. Shouldn't we have the same power to rank candidates for public office? Ranked choice voting just makes sense. In the 2011 mayoral election in Portland, 94% of voters surveyed said that they “fully understood” the ballot design and the voting instructions.

Are electronic voting machines needed for ranked choice elections?

A: No. Ranked choice voting is designed to work with paper ballots. This initiative does not require, suggest or assume that Maine adopt the use of electronic voting machines. This is a separate issue entirely.

How are overseas voters, including U.S. military personnel who are stationed abroad, impacted by ranked choice voting?

A: Ranked choice voting allows overseas voters, including U.S. military personnel who are stationed abroad, to participate fully in elections back home. Alabama, Arkansas, South Carolina and Louisiana use ranked choice ballots to enfranchise overseas voters.

Not all reforms allow overseas voters to participate fully in the democratic process. Actual runoff elections disenfranchise overseas voters, including U.S. military personnel, because there is not enough time to get them a ballot and have it returned.

Ranked choice voting allows our troops stationed abroad to participate fully in elections.

How will ranked choice voting impact primary elections?

A: Nominees will emerge from party primaries with the backing of a majority of party voters. Here are several examples of candidates winning primary elections with less than 40% of the vote:

- In 2012, 6 Republicans and 4 Democrats ran for the open seat for U.S. Senate. The Democratic nominee won her primary with 38% of the vote, while the Republican nominee won his primary with 28% of the vote.
- In 2010, 5 Democrats and 7 Republicans ran for governor. The Democratic candidate was nominated with 34% of the vote, while the Republican candidate was nominated with 37% of the

vote.

- In 2002, 6 Democrats and 4 Republicans ran for the open seat in Maine's second congressional district. The Republican and Democratic nominees each won their primaries with only 31% of the vote.

Will ranked choice voting impact the partisan composition of the Maine Legislature?

A: No. Ranked choice voting does not benefit one party over another. It simply ensures that candidates with the most votes win, so voters get what they want and the Legislature is representative of we the people.

Why is ranked choice voting preferable to actual runoff elections?

A: Actual runoff elections result in a majority winner among those who vote, but voter turnout typically declines sharply when voters are asked to return to the polls in early July and in early December for primary and general election runoffs. In this era of big money politics, actual runoffs also mean that millions of dollars from out of state will be spent by special interests on negative advertising over the summer and during the Thanksgiving holiday.

Runoff elections also disenfranchise overseas and military voters, cost taxpayers and towns more money, and mean that voters may still cast ballots strategically in the first round to avoid vote splitting that might impact who advances to the runoff.

Does ranked choice voting raise any constitutional questions?

A: Courts in four states have ruled that ranked choice voting is fully constitutional, saying it upholds one person, one vote, and ensures that the candidate with the most votes is elected. Ranked choice voting elections have been happening for years across the country. Even voters in Portland, Maine have already used this voting system legally for years.
Constitutional scholars at the University of Maine School of Law and other prominent attorneys have confirmed that ranked choice voting is consistent with both the U.S. and Maine Constitutions. Click here to read their opinions.

What data exists to support the argument that ranked choice voting has reduced negative campaigning in jurisdictions where it has been adopted?

A: In the 2011 ranked choice election for mayor of Portland, 41% of respondents from a survey of early voters conducted by FairVote felt there was less negative campaigning than usual.

In 2014, a study by professors at the University of Iowa and Western Washington University found that only 5% of voters in 7 cities using ranked choice voting thought that candidates criticized each other "a great deal" compared with 25% of voters in cities not using ranked choice voting. The survey also found that cities using ranked choice ballots reported less negative campaigns than in cities that did not use ranked choice ballots. In cities using ranked choice voting, 42% of voters found the campaign season to be less negative, compared to 28% of voters in cities without ranked choice ballots. Clear majorities of voters in all 7 cities with experience casting ranked choice ballots support this reform.
This is important in fostering positive attitudes among the public towards the democratic process. Furthermore, as candidates seek second and third choices, they must reach out beyond their traditional base and engage with a greater number of voters, naturally bringing more people into the democratic process.

What data exists to support the claim that ranked choice voting increases participation in the democratic process?

A: Ranked choice voting shifts the way candidates interact with constituents and with one another that can lead to higher voter participation.
Ranked choice voting incentivizes greater civility on the campaign trail because candidates need to appeal to all voters, not just to their base of support. As Portland Mayor Mike Brennan put it , "In other campaigns if somebody had a lawn sign of your opponent on the lawn, you walked by. In this case, you stopped and still talked to them."

On average and across the country, voter turnout has declined in recent years. There are positive indications that ranked choice voting fosters an environment of higher voter participation. One of the best examples of the impact ranked choice voting can have on the democratic process is the 2011 Mayoral race in Portland. In an off-year election, Portland experienced better than 40% turnout , much higher than the 25% percent predicted by the Portland City Clerk's Office. Cities in California and Minnesota that use ranked choice voting report higher than average voter participation.

Why did the League of Women Voters of Maine endorse ranked choice voting?

A: The League of Women Voters is a nonpartisan political organization encouraging informed and active participation in government. It influences public policy through education and advocacy. Following three years of intense research, study and discussion, the League of Women Voters of Maine endorsed Ranked Choice Voting in 2011. Their final position reached through consensus reads as follows:

> "The League of Women Voters of Maine supports election systems for elected offices in single seat elections that require the winner to receive a majority of the votes, as long as the majority is achieved by Instant Runoff Voting/Ranked Choice Voting, rather than a second, separate runoff election."

Click here to read more about the League of Women Voters of Maine's Voting Concurrence.

Where can I read the citizen initiative bill?

A: Click here to read the citizen initiative bill in its entirety.

Was this helpful?

PAID FOR BY THE COMMITTEE FOR RANKED CHOICE VOTING
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ADDENDUM 2

TESTIMONY OF LEAGUE OF WOMEN VOTERS

Hearings on LD 518 Before the Joint Standing Committee on Legal and Veterans' Affairs

April 22, 2013

LEAGUE OF WOMEN VOTERS OF MAINE

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TO: The Honorable Senator John L. Tuttle, Jr.
The Honorable Representative Louis J. Luchini, Co-chairs
Members of the Joint Standing Committee on Veterans and Legal Affairs

DATE: April 22, 2013

RE: LD 518 An Act To Establish Ranked-choice Voting in the State

LD 860 An Act To Require That the Governor, Senators and Members of the House of Representatives Be Elected by the Ranked-choice Voting Method

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Good morning. My name is Ann Luther. I'm the Advocacy Chair of the League of Women Voters of Maine, a volunteer, and a resident of Trenton. The League of Women Voters of Maine submits the following testimony in support of LDs 518 and 860.

The League of Women Voters of Maine supports election systems for offices in single seat elections that require the winner to receive a majority of the votes, as long as the majority is achieved by Ranked Choice Voting, rather than a second, separate runoff election.

Here's why the League supports Ranked Choice Voting (RCV):[1]

- RCV ensures a majority winner
- It minimizes "strategic" voting
- It allows voters to express their sincere preferences among candidates
- RCV eliminates problems of spoiler candidates knocking off major candidates
- RCV does not require separate run-off elections
- It promotes civility in campaigns
- RCV is most likely to elect a candidate with broad appeal
- It may improve voter participation

In general, League members believe that the winner of single seat elections should be determined by a majority vote, and they support a system of Ranked Choice Voting for determining the majority winner. While there is strong support among our members for majority-winner elections, that support diminished if the winner has to be determined by a traditional runoff election. Some of the factors that were important in diluting the consensus included:

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[1] Read the League of Women Voters' briefing paper on Ranked Choice Voting at http://www.lwvme.org/files/lwvmeIRV.pdf.

- Increased opportunity for strategic voting during the original election
- Expense to the state and municipalities in conducting the run-off election
- Extending the campaign season
- Driving up the cost of campaign financing
- Loss of civility during the runoff election
- Potential for reduction in voter engagement and turnout in traditional runoff elections.

Plurality voting, in which the candidate with the most votes wins, can be thorny in elections with more than two candidates. Voters may sometimes be reluctant to vote for the candidate they most strongly support for fear of facilitating the election of the candidate they most strongly oppose. The winning candidate may be one fervently supported by a minority of voters – albeit a winning plurality – but lacking the broad support of a majority of voters.

Ranked Choice Voting, on the other hand, encourages candidates to reach out to more voters, alleviates concerns about the "spoiler effect," and ensures the election of candidates who have majority support.

We understand that because Maine's Constitution specifies that candidates be elected by a plurality of the vote, there is a question whether or not instituting Ranked Choice Voting would require an amendment to our State Constitution. Proponents believe that a Constitutional Amendment is not necessary and that RCV is defensible under our current Constitution, but the League would support such an amendment, if required.

In addition, we know that there are numerous logistical issues to be resolved in order for Ranked Choice Voting to be practical in a statewide election, and there are several options to be considered. Which options to choose depend on our tolerance for taking time and spending money. Are we willing to wait 3 days for election results? Probably. Three weeks? Maybe. Two months? Probably not. Are we willing to spend a few hundred thousand dollars over a few years? Probably. A million dollars or more? Maybe, but not so easily.

At the least, implementing RCV would require an upgrade to our current optical scanning technology for those jurisdictions that already have it. Some or all of those that don't have optical scanning currently might need to get it for the first time. Whether it would be mandatory for every voting jurisdiction is a question. In any case, we will need a plan for physically or electronically transferring local election results and/or ballots to a central facility for 2nd and subsequent round tabulations. Electronic transmittal would require additional enabling legislation, along with new telecommunications capabilities. Physical transfer would require a manual transport plan with secure chain-of-custody provisions that would need to be deployed for every affected election. Neither of the bills before you answers these questions or makes these choices. But the choices will have to be made and supported by appropriations, and we encourage you to do so.

Now, as to some of the differences between these two bills, LD 518 covers federal elections for U.S. Congress and U.S. Senate; LD 860 does not. The League's position

supports use of Ranked Choice Voting in all of these instances. It is an open question whether RCV would be used in the primaries, as well as in the general elections.

LD 860 caps the number of counting iterations at three rounds and declares the winner to be the candidate with the greatest number of votes after the third round. We note that this could be a plurality winner, not a majority winner. Assuming that the central tabulation of ballots will not be a manual process, but will be automated in some way, this seems like a needless compromise. LD 518 specifies that the counting iterations continue until only two candidates remain. We note that it would be possible for a majority winner to emerge before all but one other candidate was eliminated.

LD 860 requires the question of Ranked Choice Voting to be put to referendum. LD 518 does not. The League believes in representative government, and we endorse the notion that this body is fully empowered to pass this legislation if you believe it to be in the best interests of the people of Maine.

Which we hope you will do.

Ann Luther
LWVME Advocacy Chair
Trenton